

Matter of Bengé
Del. Supr. No. 529, 1999 (7/1/00)
Board Case No. 131, 1997

Disciplinary Rules: DLRPC 1.3, 1.4(a) and BPR 7(4)

Sanctions Imposed: One-year suspension.

John H. Bengé, Jr., Esquire was suspended by the Delaware Supreme Court for a period of one year. The one-year suspension is effective July 1, 2000. During the suspension, Mr. Bengé is prohibited from engaging in the practice of law, directly or indirectly, and is prohibited from sharing or receiving legal fees. In addition, Mr. Bengé is required to pay restitution to his client.

The sanction of a one-year suspension was imposed on Mr. Bengé by the Delaware Supreme Court because Mr. Bengé engaged in ethical misconduct. While representing a client, which was a creditor in a consumer bankruptcy matter, Mr. Bengé failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of the pending matter, and failed to promptly comply with his client's reasonable requests for information. In addition, Mr. Bengé violated a prior order of probation which required that he communicate with clients in writing and promptly respond to his clients' requests for information.

The Court affirmed the findings of the Board on Professional Responsibility that Mr. Bengé had violated Rules 1.3 and 1.4(a) of the Rules of the Delaware Lawyers' Rules of Professional Conduct ("Rules"), as well as Board on Professional Responsibility Rule ("Board Rule") 7(4). Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client. Rule 1.4 (b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Board Rule 7(4) provides that discipline may be imposed for violation of any disciplinary order, including orders of probation.

Mr. Bengé's disciplinary history began when sanctions were imposed against him in 1995. That disciplinary case arose from Mr. Bengé's representation of an elderly client in a personal injury case. After his client lost an arbitration hearing, Mr. Bengé failed to file an appeal. When opposing counsel filed a motion to dismiss, Mr. Bengé failed to respond and the matter was dismissed. Mr. Bengé did not learn of the dismissal for more than two

years. When he filed a motion to re-open the case, two and one-half years had passed since the case was dismissed and seven and one-half years had passed since the accident occurred. The court denied the motion filed by Mr. Bengé to re-open the case. Mr. Bengé admitted that he had violated the Delaware Lawyers' Rules of Professional Conduct in his handling of this personal injury matter. He was sanctioned with a private admonition and a private two-year period of probation. The probationary period began on June 29, 1995.

During the pendency of that private probation, Mr. Bengé engaged in misconduct which resulted in four new investigations by the Office of Disciplinary Counsel. In one matter, Mr. Bengé admitted that he had failed to respond to his client's repeated requests for information and documents. In a second case, Mr. Bengé admitted that he had violated the terms of his prior probation. In the third case, Mr. Bengé admitted that he had failed to respond to inquiries by the Office of Disciplinary Counsel. In the fourth case, a Supreme Court appeal being pursued by Mr. Bengé's client was dismissed as a result of Mr. Bengé's failure to file a brief on his client's behalf. Mr. Bengé admitted that he had violated the Delaware Lawyers' Rules of Professional Conduct. He was publicly reprimanded and placed on a public two-year probation, which began on September 18, 1996.

The misconduct which led to Mr. Bengé's suspension occurred during the course of a two-year public probation. In considering the appropriate sanction to be imposed for Mr. Bengé's recent misconduct, the Delaware Supreme Court considered the following aggravating factors: (1) prior disciplinary offenses; (2) a pattern of misconduct; (3) multiple offenses; (4) refusal to acknowledge wrongful nature of conduct; (5) substantial experience in the practice of law; and (6) indifference to making restitution.

The Court also noted:

The most recent ethical violations found by the Board [on Professional Responsibility], to which Bengé has filed no objections, occurred at a time when Bengé was already serving a period of public probation for prior violations of the [Delaware Lawyers' Rules of Professional Conduct]. Bengé's record reflects a persistent pattern of client neglect that has continued unabated despite the imposition of a private admonition with a private probation and the subsequent imposition of a public reprimand with a public probation. Bengé's disciplinary history demonstrates an inexcusable disregard for his responsibilities to his clients as an officer of this Court. Accordingly, we have concluded that an appropriate sanction must include a period of suspension because Bengé was already on probation for prior ethical violations when he engaged in further acts of professional misconduct.

In the Matter of John H. Bengé, Jr., Del. Supr., No. 529, 1999 (June 13, 2000) at pp. 25-26 (footnotes omitted).

By order of the Court of Chancery, Bayard W. Allmond, III, Esquire and Thomas J. Eastburn, Esquire, of the law firm of Allmond and Eastburn, were appointed as co-receivers of Mr. Bengé's law practice.